IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CASE NO.: SC05-1295

UNITED STATES FIRE INSURANCE
COMPANY, ETC.,

Appellants

v.

D.C. Case No. 2D 03-134
L.T. Case No. 01-5533CA

J.S.U.B., INC., ETC., ET AL.,

Appellees

_____/

AMICUS CURIAE BRIEF OF POOLE & KENT COMPANY IN SUPPORT OF APPELLEES, J.S.U.B., INC., ETC.

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I. CONCISE STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE*, POOLE & KENT COMPANY

Poole & Kent Company ("Poole & Kent"), by and through counsel, respectfully submits this *amicus curiae* brief in support of Appellees, J.S.U.B., Inc., etc., et al. (collectively "J.S.U.B."), pursuant to Florida Rules of Appellate Procedure, Rule 9.370. Poole & Kent is a corporation duly organized and existing under the laws of the State of Florida. Poole & Kent is a contractor doing business in the Florida construction industry. In its construction operations, Poole & Kent often retains subcontractors to perform work.

Poole & Kent is required to obtain commercial general liability insurance. Similar to the United States Fire Insurance Company, ("USFIC") policies at issue, the policies obtained by Poole & Kent consist of general liability policy forms drafted by the Insurance Services Office ("ISO") and incorporated into the commercial general liability policies by the ISO subscribing carriers. Poole & Kent requires liability coverage for its completed operation exposures for property damage caused by its own work and/or arising from its subcontractors. As with other contractors performing construction in Florida, Poole & Kent paid a substantial premium for this coverage and relied upon the explanations in ISO and insurance industry publications as to the scope of coverage afforded by the ISO forms.

Poole & Kent submits that consistent with the premiums charged for its operations specifically earmarked for such liabilities and consistent with the ISO drafting intent, liability coverage is owed for property damage caused by the insured, other than damage caused to its own work if caused by the insured. Since Poole & Kent is a contractor and relies upon commercial liability policies with the same ISO form language contained in the USFIC policies, the arguments and information presented by Poole & Kent in this case is relevant to the questions presented to this Court. Also, since other Florida builders and contractors rely on such coverage, it is requested that the Supreme Court consider the arguments provided in this *amicus curiae* brief.

II. SUMMARY OF THE ARGUMENT

This Supreme Court should find the USFIC commercial general liability policies at issue provide J.S.U.B. with liability coverage for both the property damage caused by its completed work (other than damage to its own work) and liability coverage for damage to its work if caused by subcontractors retained by the insured. Importantly, the definition of "occurrence" is satisfied if the insured contractor's liability is based on negligent acts and where the insured did not specifically intend to cause property damage. Also, the "Your Work" exclusion is limited to damage to the insured's work if caused by the insured and the

impaired property exclusion applies to faulty workmanship only where there is no physical injury to property. Finally, the work product exclusion does not apply to real property. These findings are consistent with the scope of coverage found in the USFIC policies sold J.S.U.B. These policies adopt the ISO drafting intent by incorporation of the ISO forms without change.

The appellate court correctly noted that the case law relied upon by USFIC preceded the 1986 changes in the commercial general liability forms propounded by the ISO (which confirmed the scope of liability coverage for exposures arising from the products/completed operations hazard) and the Supreme Court's determination of the meaning of an "accident" in *State Farm Fire & Casualty Co. v. CTC Development Corp.*, 720 So. 2d 1072 (Fla. 1998) ("*CTC Development*"). *J.S.U.B., Inc. v. United States Fire Insurance Company*, 906 So. 2d 303, 307-309 (Fla. DCA 2d 2005). The USFIC policies at issue included this coverage, known in the insurance industry as Broad Form Property Damage ("BFPD") liability coverage. Florida case law analyzing policy language did not consider the ISO drafting intent, the premiums charged for this exposure and industry publications confirming this coverage.

Poole & Kent urges this Court to affirm the appellate court decision and find the ISO drafting intent is controlling and dispositive, given the ISO language is contained in the subject policies. The adoption of this language by

USFIC was specifically intended to provide policyholders the specific liability coverage found by the appellate court. The ISO drafting history and insurance industry publications aid the Court in the interpretation of the intended coverages provided under the standard ISO language. By incorporating the ISO form language in its commercial general liability policies issued to J.S.U.B., USFIC adopted this intent. USFIC employed the ISO forms and, in doing so, adopted the ISO drafting intent. For this reason and because J.S.U.B. expected such coverage, the Court should reject USFIC's attempt to create a construction contrary to the intent and expectation of the parties.

III. ARGUMENT

It is well-settled law in Florida that the private agreement of the parties is to be respected and enforced absent any illegality. *Neiman v. Galloway,* 704 So. 2d 1131, 1132 (Fla. DCA 4th 1998); *see also, Umbel v. Foodtrader.com, Inc.*, 820 So. 2d 372, 375 (Fla. DCA 3d 2002). Here, USFIC and J.S.U.B. entered into a private agreement, whereby USFIC agreed to afford to J.S.U.B. liability coverage for property damage arising out of the completed work of subcontractors engaged by J.S.U.B. The parties' private agreement to afford this coverage is not illegal under Florida law. Neither the Florida Legislature nor the Florida Department of Insurance has enacted a statute or regulation barring the availability of such coverage. Further, a premium was charged for this coverage.

A. Through The Incorporation Of ISO Forms In The USFIC Policies, USFIC And J.S.U.B. Agreed To Confer Coverage To J.S.U.B. Consistent With The Intent Reflected In The Drafting History Of The ISO Language

As recognized by the appellate court, the USFIC policies "are standardized policies promulgated by the Insurance Services Office." *J.S.U.B., Inc*, 906 So. 2d at 308. The liability coverage sought by building contractors was authored by the ISO in its form CGL policies. The USFIC policies adopted the ISO drafting intent by use of such language. Implicit in the ISO drafting history is the recognition that the completed work was to function as intended and any damage arising from the completed work resulting in liability is covered unless otherwise excluded.

The drafting history is reflected in ISO explanatory circulars submitted to ISO's subscribing carriers and insurance industry publications discussing ISO form policies[1]. In the January 29, 1979 ISO Circular "Broad Form Property Damage Coverage Explained", the ISO advised subscribing carriers as to the impact on coverage from exclusions in the ISO form BFPD endorsements made available to subscribing carriers at that time. Exclusion (z) found in these endorsements provided there was no coverage for property damage "with respect

[1] Relevant excerpts of these persuasive authorities are attached to the Appendix accompanying this brief.

to the completed operations hazard and with respect to any classifications stated below as 'including completed operations', to property damage to work performed by the named insured arising out of materials, parts or equipment furnished in connection therewith." (Appendix Exhibit ("Apx. Ex.") "A"). The endorsement modified the standard exclusion, which provided that there was no coverage for property damage to work "performed by or on behalf of the named insured." *LaMarche v. Shelby Mut. Ins. Co.*, 390 So. 2d 325, 326 (Fla. 1980).

The ISO explained that the BFPD endorsement [exclusion (z)]:

> provides broad form completed operations property damage coverage by excluding only damages caused by the named insured to his own work. Thus,
> (1) The insured would have no coverage for damage to his work arising out of his work.
>
> (2) The insured would have coverage for damage to his work arising out of a subcontractor's work.
>
> (3) The insured would have coverage for damage to a subcontractor's work arising out of the subcontractor's work.
>
> (4) The insured would have coverage for damage to a subcontractor's work, or if the insured is a subcontractor to a general contractor's work or another subcontractor's work, arising out of the insured's work. (Emphasis added.) (Apx. Ex. "A").

In 1986, the ISO amended its policy form to automatically include BFPD coverage without inclusion of the BFPD endorsement. The July 15, 1986 ISO "Commercial General Liability Program Instructions Pamphlet Furnished" (Apx.

Ex. "B"), advised subscribing carriers of the impact of the new ISO 1986 edition form CGL policy. In the pre-1986 CGL form policy

> Broad Form Endorsement . . . also covers damages caused by faulty workmanship to other parts of work in progress; and damage to, or caused by, a subcontractor's work after the insured's operations are completed. (Emphasis added.) (Apx. Ex. "B").

The 1986 ISO pamphlet advised in the new CGL form policy

> Exclusions have been completely rewritten and clarified with no change in overall scope of coverage. "Broad Form" coverage has been incorporated in the new provisions. Real property is specifically eliminated from the definition of "your product", so that the broad form coverage for work and completed operations clearly applies. . . . (Emphasis added.) (Apx. Ex. "B").

The scope of coverage intended by the ISO is adopted by USFIC through incorporation of ISO forms in its policies. Consequently, USFIC cannot deny liability coverage for property damage arising out of the completed operations of J.S.U.B.'s subcontractors or for property damage arising out of J.S.U.B.'s work other than to its own work.

Insurance industry publications support this conclusion. Exclusion j(5) excludes property damage to "that particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those

operations." (Emphasis added.) With respect to exclusion j(5), International Risk Management Institute ("IRMI") advises

> **Operations on "That Particular Part."** This paragraph of the exclusion applies primarily to the construction industry, and only to operations being performed on real property. If property damage arises out of the named insured's operations (or out of operations of the named insured's contractors or subcontractors), there is no coverage for damage to that particular part of the real property on which the operations are being performed. (Emphasis added.)
>
> . . .
>
> The language of exclusion j.(5) makes it clear that the exclusion applies only to "course of construction" property damage exposures, not to claims involving the insured's completed operations, since the insured is no longer "performing operations" on completed work. (Emphasis added.) IRMI "Commercial Liability Insurance, Volume I" Chap. V. Commercial Liability Annotated CGL Policy, February 2006, pages V.D.110; V.D.114; V.D.117. (Apx. Ex. "C").

Exclusion j(6) excludes property damage to "that particular part of any property that must be restored, repaired or replaced because 'your work' was incorrectly performed on it." However, it is further noted j(6) "exclusion does not apply to 'property damage' included in the 'products-completed operations' hazard." (Emphasis added.)

Regarding coverage exclusion j(6), the "Faulty Workmanship" exclusion, IRMI recognizes the CGL policy has an express limitation that the exclusion does not apply to property damage that comes within the products/completed operations hazard. "It eliminates coverage only for damage arising out of work in progress . . . The cost of repairing or replacing the insured's finished work may be excluded by 'Damage to Your Work,' exclusion l." (Emphasis added.) IRMI "Commercial Liability Insurance, Volume I" Chap. V. Commercial Liability Annotated CGL Policy, February 2006, pages V.D. 110; V.D. 120. (Apx. Ex. "C").

Exclusion l, regarding "Your Work", excludes "'Property damage' to 'your work' arising out of it or any part of it and included in the 'products-completed operations hazard'. This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor." (Emphasis added.) IRMI advises that the "Your Work" exclusion:

> precludes coverage for property damage to the named insured's work after it has been completed, arising out of the work or any part of it. By specific exception, the exclusion does not apply if the work that is damaged or that causes the damage was done on behalf of the named insured by a subcontractor. (Emphasis added)
>
> . . .

> By virtue of the subcontractor exception, the insured has coverage, despite exclusion l., with respect to the following exposures:
>
> ? Property damage to work performed by the insured when the damage results from the work of the insured's subcontractor
>
> ? Property damage to work performed by the insured's subcontractor when the damage results from that subcontractor's work
>
> ? Property damage to work performed by the insured's subcontractor when the damage results from work performed by the insured
>
> ? Property damage to work performed by the insured's subcontractor when the damage results from the work of another contractor or subcontractor. IRMI "Commercial Liability Insurance, Volume I" Chap. V. Commercial Liability Annotated CGL Policy, February 2006, pages V.D. 202; V.D. 204 – 205. (Apx. Ex. "C").

The National Underwriter Company's Fire Casualty & Surety ("FC&S") Bulletins similarly concluded the coverage found by the Appellate Court. This bulletin state that Exclusion j(5) is to exclude property damage only to "that particular part" of real property on which the named insured or a contractor <u>is working</u> and that "the use of the word 'particular' indicates that the exclusion should be applied narrowly." (Emphasis added.) FC&S Bulletins, September 1993, pages Aa-13 – Aa-15. (Apx. Ex. "D"). With respect to the "faulty workmanship" exclusion, j(6) in the ISO form CGL policies, the FC&S Bulletins

advise the exclusion does not apply to the completed work. FC&S Bulletins, September 1993, pages Aa-13 – Aa-15. (Apx. Ex. "D").

The FC&S Bulletins confirm that the "Your Work" exclusion ("l") does not exclude property damage arising out the insured's subcontractor. FC&S Bulletins, September 1993, pages Aa-16 – Aa-17. (Apx. Ex. "D"). When property damage arises out of the completed work of a subcontractor retained by the named insured, the FC&S Bulletins provide that neither exclusion j(6), nor exclusion l (your work) will exclude coverage for the property damage. FC&S Bulletins, September 1993, pages Aa-16 – Aa-17. (Apx. Ex. "D").

B. <u>The Court Should Not Negate The Insurance Industry Intent</u>

Florida courts will respect and enforce the private agreement between the parties, unless illegality or fraud is involved. *Umbel*; *Neiman.* Neither the Florida Department of Insurance nor the Florida Legislature prohibits the coverage provided by the ISO. The insurance industry, including USFIC, has specifically made this coverage available to insure the risks of property damage arising from subcontractors' completed work, or the resulting damage arising from the insured's work.

USFIC could have easily modified the policy by the inclusion of language that there is no coverage for property damage arising from faulty workmanship included within the completed operations hazard, but the carrier failed to do so.

Certainly, such intent is negated by the limitation of exclusion j(6), the "Faulty Workmanship" exclusion, which provides that the exclusion does not apply to completed operations liability exposures.

In fact, with respect to completed work and liability flowing from such completed work, the ISO included the "Your Work" exclusion, exclusion l. This exclusion is drafted in the past tense to identify the exclusion is to apply to the completed work, unlike exclusion j(6). In exclusion l, the drafter uses the phrase "work performed" to identify the exclusion does not apply with respect to work performed by the insured's subcontractor. Clearly the drafting intent limited the "Your Work" exclusion to the insured's work itself, not to resultant damage to other trades' work. Also, the exclusion is not intended to apply to damage to the insured's own work if such damage arose from the work performed by the insured's subcontractor.

> A contract is not void, as against public policy, unless it is injurious to the interest of the public, or contravenes some established interest of society. It is the province of a court to expound the law only, and not to speculate upon what is best, in its opinion, for the advantage of the community. . . . Judicial tribunals should hold themselves bound to the observance of rules of extreme caution when called upon to declare a transaction void on the ground of public policy, and prejudice to the public interest must clearly appear before a court would be warranted in pronouncing the transaction void on this account. (Citation omitted) (Emphasis added) *Gonzalez v. Trujillo*, 179 So. 2d 896, 898 (Fla. DCA 3d 1965).

C. The ISO Drafting Intent Adopted By USFIC Is Dispositive And The Definition Of "Occurrence" Is Satisfied

The established rule is to abide by the "intent of the parties" to an insurance contract. *Tucker Construction Co. v. Michigan Mut. Ins.*, 423 So. 2d 525 (Fla.5th DCA 1982) ("*Tucker*"). The court looks to "the intent of the contractor and the insurance company when they entered into the subject contract of insurance." *Id.*, at 528. Certainly, the ISO drafting intent is dispositive since it was incorporated into the policy without change. "A court should arrive at a contract interpretation consistent with reason, probability, and the practical aspect of the transaction between the parties. [Citation omitted.] Words should be given their natural meaning or the meaning most commonly understood in relation to the subject matter and circumstances, and reasonable construction is preferred to one that is unreasonable." *Thompson v. C.H.B., Inc.*, 454 So.2d 55, 57 (Fla.4th DCA 1984).

The use of the ISO coverage form reasonably reflects the coverage mutually intended by the parties, which should be honored by the Court. A construction of the policy contrary to the drafting intent and insurance industry publications would render the policy either ambiguous or contrary to the intent of the contracting policies.

The definition of an "occurrence" has been satisfied. The definition of "occurrence" and the word "accident" is properly construed in *CTC Development.* Property damage arising from the completed work of a contractor giving rise to liability is covered where there is no showing that the insured specifically intended damage to arise from such work. If property damage caused by the negligence of a subcontractor is not within the scope of an "occurrence", the policy would be illusory. A liability policy covers one for ones acts or omissions, negligence or faulty work. Otherwise, the policy could not be triggered.

Florida recognizes that an occurrence triggering coverage under a CGL policy is satisfied where the acts leading to the damage constituting the occurrence is neither expected nor intended by the insured. The CGL policies define "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions". This Court has found that "it is the act which causes the damage, <u>which is neither intended nor expected from the standpoint of the insured, that constitutes the 'occurrence'</u>" triggering coverage. (Emphasis added.) *Koikos v. Travelers Ins. Co.*, 849 So. 2d 263, 271 (Fla. 2003), *citing*, *New Hampshire Ins. Co. v. RLI Ins. Co.*, 807 So. 2d 171 (Fla.

3d DCA 2002). *See also*, *CTC Development*, 720 So. 2d 1072 (where "accident" not otherwise defined, Supreme Court held "accident" triggering liability coverage includes damage neither expected nor intended from the standpoint of the insured.)

Accordingly, the policies contemplate liability coverage regarding negligent acts or faulty workmanship arising from a subcontractor's completed work. Given the definition of "occurrence" and related case law, an "accident" constituting an "occurrence" is an unforeseen event causing an unintended result.

USFIC argues that it is not an "accident" where faulty workmanship causes property damage. This position is untenable. Liability coverage should be available to an insured if damage arises out of a subcontractor's completed work negligently performed. Otherwise, the policy could not be triggered where there is liability based on fault. Also, where the insured relied upon a subcontractor's expertise, training and experience on how the work is performed, the damage is fortuitous.

Further, negligent/faulty work is the basis of liability for all liability policies in which an accidents trigger coverage. For example, one cannot dispute where a shop owner "negligently" mops a floor causing a wet condition which leads to a slip and fall injury, liability coverage is available to the store

owner. The owner intended to have a clean floor, not to cause injury. Similarly, with respect to an automobile policy, an insured's speeding and reckless driving will forseeably cause an accident and property damage. Nevertheless, there will be liability coverage for this "accident" and damage, despite the insured's negligent driving. The definition of "occurrence" in a shopkeeper's policy, an auto policy and the subject policy is identical. A contractor intends to install its work in a proper manner, expecting the work to be a functional component of the building. Any resulting unintended damage to another's work should be covered.

As another example, the Court should consider the following hypothetical: A general contractor retains a roofing subcontractor and a residence's roof is installed and completed, and the roofer accidentally or negligently leaves a nail protruding on the roof next to a gutter. Such inadvertence is negligent, is faulty work and one can anticipate property damage caused by water intrusion into the residence. The general contractor has coverage for such property damage. The roofing contractor, under its policy, has coverage for all resultant damage, other than for the hole in the roof (damage to one's own work excluded by the "Your Work" exclusion), unless the roofer retained a second tier subcontractor to install the roof. If so, all damage would be covered also under the roofer's policy.

D. Case Law Relied Upon By The Trial Court And By USFIC Should Not Be Followed Here Since Those Cases Did Not Involve The Post-1986 USFIC Policy Language

In *LaMarche*, 390 So. 2d at 326, relied upon by the trial court in denying coverage, the Supreme Court held the standard liability policy language made available to carriers at that time did not provide coverage for faulty workmanship or property damage arising from a subcontractor's work. However, that language consisted of the pre-1986 ISO forms, as explained in the referenced ISO publications. (Apt. Ex. "A" and "B"). The ISO form language in *LaMarche* specifically barred liability coverage for property damage to work performed "by or on behalf of" the insured. (Emphasis added) *Id.*, at 326.

The insured in *LaMarche* could have purchased what was then identified as a "broad form property damage" liability endorsement as explained in the 1979 ISO circular. (Apt. Ex. "A"). According to this Circular, a contractor could have purchased liability coverage for its subcontractors' defective work by purchasing this endorsement. As noted in the 1979 Circular, exclusion z in the endorsement was modified to limit the exclusion. The endorsement deleted the words "or on behalf of", such that the exclusion barred coverage to damage to work "performed by the insured", rather than damage caused by work performed "by or on behalf" of the insured. For this historical discussion, see *Maryland Casualty Co. v. Reeder*, 221 Cal. App. 3d 961, 270 Cal. Rptr. 719 (1990).

In 1986, the ISO revised its CGL form policy, which incorporated "broad form property damage" coverage, previously obtainable by endorsement. The BFPD language was incorporated into the "Your Work" exclusion. As confirmed in the 1986 ISO Pamphlet, coverage was intended for property damage arising out of the arising out of the insured's subcontractors' completed work. (Apt. Ex. "B").

Since the issuance of the *LaMarche* decision, neither the Florida Legislature nor the Florida Department of Insurance has promulgated any rules or legislation that would preclude Florida citizens from purchasing what was formerly known as BFPD coverage as incorporated in the USFIC policies. As observed by the court of appeals, the wording in the policy addressed by the *LaMarche* Court is **not** that which is presented here. Property damage caused by subcontractors is an insurable risk by the purchase of BFPD coverage as provided through ISO forms adopted by subscribing carriers.

Since 1986, BFPD coverage was incorporated into the ISO standard policy form (incorporated into the USFIC policies). The policy at issue in *LaMarche* did **not** contain BFPD coverage language which is included in the USFIC policies. Applying the *LaMarche* decision to the coverage afforded by

the USFIC policies would render the BFPD language in the USFIC policies illusory, null and void. *LaMarche* is inapplicable, because the coverage not found in the policy reviewed by the *LaMarche* Court is found here.

Other jurisdictions have similarly recognized, under the post-1986 ISO language, property damage arising out of the work of an insured's subcontractors constitutes an "occurrence" triggering œverage. **Alaska** *Fejes v. Alaska Ins. Co., Inc.*, 984 P.2d 519 (Ak. 1999); **California** *Reeder*; **Colorado** *Hecla Mining Co. v. New Hampshire Insurance Co.*, 811 P.2d 1083, 1088 (Colo. 1991); **Kansas** *Lee Builders, Inc. v. Farm Bureau Mutual Ins. Co.*, 2006 WL 1561294 (Kan. June 9, 2006); **Minnesota** *O'Shaughnessy v. Smuckler Corp.*, 543 N.W.2d 99 (Minn. Ct. App. 1996), *abrogated on other grounds, Gordon v. Microsoft Corp.*, 645 N.W.2d 393 (Minn. 2002); **Nevada** *McKellar Development of Nev., Inc. v. Northern Ins. Co. of New York*, 837 P.2d 858 (Nev. 1992); and **Wisconsin** *Kalchthaler v. Keller Constr. Co.*, 591 N.W.2d 169 (Wis. App. 1999).

The Texas court of appeals recently confirmed CGL policies are to provide such coverage in *Archon Investments, Inc. v. Great American Lloyds Ins. Co.*, 174 S.W.3d 334 (Tex. Ct. App. 2005). The court analyzed the policy coverage language and exclusions, including the "Your Work" exclusion and exclusions J(5) and j(6), finding that damage to the insured's work was excluded, but the exclusionary language was inapplicable "if the damage to

property occurred after the house was completed and sold if the work out of which the damage arose was performed on [the insured's] behalf by a subcontractor." Id., at 341 – 342.

Homeowners Warranty Corp. v. Hanover, 683 So. 2d 527 (Fla. 3d DCA 1996) is distinguishable factually in that it does not address the drafting history of the ISO policy. There is nothing in *Hanover* to indicate that the court reviewed the ISO intent or whether the policy contained BFPD coverage. Similarly, the court in *Tucker* did not consider the intent behind the policy language as provided by the ISO and ignored the limitation of exclusion l.

E. USFIC Intended To Adopt Insurance Industry Standards And Comply With Insurance Trade Usage And Custom And Practice Regarding Liability Coverage For Subcontractor Work

Under Florida law, insurance contracts must be construed in accordance with insurance "trade usage." *National Merchandise Co., Inc. v. United Service Automotive Ass'n.,* 400 So. 2d 526, 530 (Fla. 1st DCA 1981). Specifically, an insurance contract "should be interpreted in light of custom or trade usage." *Id*., at 530. Further, Florida law requires that "language used in business document . . . should be interpreted as a reasonable person knowledgeable about the business or industry, would likely interpret them." (Emphasis added) *Hussmann Corp. v. UPS Truck Leasing, Inc.,* 549 So. 2d 215, 217 (Fla. 5th DCA 1989); *see also, Galloway Glen Home Ass'n, Inc. v. UMLIC-Six, Corp*., 717 So. 2d 592,

593 (Fla. 3d DCA 1998); *Heck v. Parkview Place Homeowners Ass'n*, 642 So. 2d 1201, 1202 (Fla. 4th DCA 1994).

Here, USFIC adopted the trade usage and meaning behind the ISO coverage language understood within the insurance industry by using unmodified ISO forms. Trade usage, the course of dealing between the ISO and subscribing carriers and the premiums charged for this coverage is controlling.

IV. CONCLUSION

For the foregoing reasons, this Court should affirm the appellate court below and find that the USFIC policies provide coverage to J.S.U.B. for property damage arising out of the work of subcontractors who worked on behalf of J.S.U.B.

DATED: September 6, 2006

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document, with attachment and Appendix (if any) has been served to all the parties in the attached mailing list on this 6th day of September, 2006.

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CERTIFICATE OF FONT REQUIREMENTS
(Fla.R.App.P. Rule 9.210(a)(2))

The text of this brief is Times New Roman 14-point font.

Dated September 6, 2006

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